

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Develop Rules and
Procedures to Preserve the Public Interest
Integrity of Government Financed Funding,
Including Loans and Grants, to Investor-Owned
Water and Sewer Utilities.

Rulemaking 04-09-002
(Filed September 2, 2004)

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

1. Summary

This ruling and scoping memo (Scoping Memo) determines the category of this proceeding to be "quasi-legislative" as the term is defined in Rule 5(d) of the Commission's Rules of Practice and Procedure (Rule), describes the scope of issues to be addressed, finds that hearings are not needed, and sets a procedural schedule.¹

2. Procedural Background

The Commission issued this order instituting rulemaking (OIR) on September 2, 2004 and mailed it to all water and sewer service utilities under its jurisdiction, as well as the California Department of Health Services (DHS), the Commission's Office of Ratepayer Advocates (ORA), and the California Water

¹ This Scoping Memo is issued pursuant to Rule 6(a)(3). Pursuant to Rule 6.4, this Scoping Memo is appealable only as to category of the proceeding.

Association (CWA), on September 3, 2004. Of immediate interest for the Commission is that with the passage of Proposition 50, investor-owned water companies will be eligible for government-financed grants for the first time.² Attached to the OIR are DHS's proposed funding categories and guidelines for Proposition 50 grants (Appendix A) and the Commission's questions for respondent utilities and proposed rules to govern the proceeds of any government grant funds received by investor-owned utilities (Appendix B).

The OIR required all Class A and Class B water utilities (utilities with over 2,000 service connections) and ORA to respond to the proposed rules and questions attached to the OIR on October 4, 2004. At the request of Park Water Company (Park), the Commission's Executive Director granted an extension of time until October 18, 2004 to file opening comments. At the request of ORA and CWA, the assigned Administrative Law Judge (ALJ) by ruling on October 26, 2004 granted two rounds of reply comments for November 1, 2004, and November 12, 2004.

Parties filing opening comments are CWA, Del Oro Water Co., Inc. and Fruitridge Vista Water Company (Fruitridge Vista).³ On November 1, 2004, ORA and Southern California Water Company filed reply comments and on November 12, 2004, second-round reply comments were filed by CWA and

² Proposition 50 was a November 2002 ballot initiative that allows the state to sell \$3.44 billion in general obligation bonds for various water-related projects. The OIR estimates that private water systems will be eligible to apply for \$1.3 billion in grants and \$90 million in loans.

³ CWA states that the following member companies specifically join in its comments as respondents to the OIR: California-American Water Company, California Water Service Company, Great Oaks Water Company, San Jose Water Company, San Gabriel Valley Water Company, Suburban Water Systems, and Valencia Water Company.

Park.⁴ The following Class B respondent utilities failed to respond: Alco Water Service, County Water Company, and East Pasadena Water Company.

All Commission regulated water utilities, regardless of whether or not they filed comments, will be subject to the rules adopted in this proceeding. Commission regulated water utilities include Class A, B, C and D water utilities.

3. Categorization, Need for Hearings, Ex Parte Rules, and Designation of Presiding Officer

This proceeding has been preliminarily categorized as quasi-legislative, as that term is defined in Rule 5(d), and this Scoping Memo affirms that categorization. Under Rule 8(f)(2), in a quasi-legislative proceeding, a “formal hearing” includes a hearing at which testimony is offered on general facts that help the Commission decide questions of law and policy and discretion, but does not include a hearing at which testimony is offered on adjudicative facts.⁵ In the OIR, the Commission provided respondents an opportunity to request a hearing to receive testimony regarding adjudicative facts and no party made this request. We find that there is no need for either a formal hearing or a hearing to receive testimony regarding adjudicative facts.

Pursuant to Rule 5(k)(3), the Assigned Commissioner is the Presiding Officer in a quasi-legislative proceeding. In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement. (Rule 7(d).)

⁴ The Comments of Del Oro and Fruitridge Vista were served on all parties but not formally filed. This Scoping Memo accepts the comments for filing; a copy of each will be sent to the Docket Office for filing.

⁵ Rule 8(f)(1) defines “adjudicative facts” as those facts that answer questions such as who did what, where, when, how, why, and with what motive or intent.

4. Scope of the Proceeding

The preliminary Scoping Memo on page seven of the OIR broadly identified the issues to include all government-financed loans and grants for Commission regulated water and sewer utilities. Based on the comments filed, and in consideration of the fact that the Commission has opened a companion rulemaking, (R.) 04-09-003, to consider ratemaking treatment for gain on sale of utility facilities, we find that the scope of this proceeding should be narrowed to focus solely on Proposition 50 government-financed grants to investor-owned water utilities.⁶ Under this narrowed focus, we will adopt policies, practices, rules and procedures governing the application, usage, ratemaking, retirement and sale of utility facilities financed in whole or part through Proposition 50 grants.

We reaffirm here our intention to adopt clear and simple rules in this proceeding that ensure that utilities will not earn a return on Proposition 50 grant funds and will not receive a gain on sale of assets financed with bond funds. These rules will be in place before DHS issues commitment letters to applicants for grant funds, so that investor-owned utilities can compete fairly with public water agencies for Proposition 50 grant funds.

To aid us in designing appropriate rules, we require all Commission regulated water utilities who have applied for Proposition 50 grants through DHS to file with the Commission specific information on the types and amounts

⁶ Proposition 50 funds are not available for sewer utilities.

of requested grants. The type of information we require is shown in the attached Appendix A.⁷

5. Procedural Schedule

A draft decision will be prepared that contains proposed rules that reflect parties' comments and the April 22, 2005 Appendix A filings.

The following schedule is adopted:

Parties who have applied for Proposition 50 grants file Appendix A information.....	April 22, 2005
Draft Decision mailed.....	July 15, 2005
Final Decision on Commission Agenda	September 2005

Pursuant to Rule 8(d), parties may request final oral argument before a quorum of the Commission. Parties must make this request by motion within 10 days after the mailing of the draft decision. This proceeding is scheduled to be completed within 18 months of the Scoping Memo, as required by Public Utilities Code Section 1701.5.

6. Service List

This ruling will be served on all water utilities. Any utility filing Appendix A information on April 22, 2005 that is not on the existing service list will be added as a party to the proceeding. Updates to the service list are reflected in the service list on the Commission's Website (www.cpuc.ca.gov).

Additional parties wishing to participate as a full party to the proceeding should make their request by letter to the Process Office, with copies to the full

⁷ DHS is the state agency administering the selection and disbursement of Proposition 50 grants. Grant applications to DHS were due by December 1, 2004. By letter dated November 1, 2004 from the Commission's Water Division, all class C and D water utilities were advised of the procedures to apply for Proposition 50 grant funds.

service list. Additions to the service list as information only or state service can be handled by an e-mail request to ALJ Walwyn (cmw@cpuc.ca.gov).

Therefore, **IT IS RULED** that:

1. This proceeding is categorized as quasi-legislative, and this category determination is appealable under the procedures set forth in Rule 6.4 of the Commission's Rules of Practice and Procedure.
2. There is no need for either formal hearings or hearings to receive testimony regarding adjudicative facts.
3. Commissioner Michael R. Peevey is the Presiding Officer.
4. The scope of the proceeding is set forth in Section 4.
5. All water utilities who have applied for Proposition 50 grant funds shall file the information shown in Appendix A by April 22, 2005.
6. The procedural schedule and process for this proceeding are set forth in Section 5.

Dated March 21, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

APPENDIX A

Summary and Description of Request(s) for Proposition 50 Funds								
Company Name:								
District Name:								
Instructions: Provide the following information for each individual request for Proposition 50 Funds.								
Line No.	Name/Number of DHS Program for Project Requested (ex. Water Security - 3)	Location Name and Number	Dollar Amount Requested for Proposition 50 Funds		Total Project Cost	Matching Funds?	Security Vulnerability Assessment?	Description of Project (what company plans to build, why, and what any expenses are for).
			For Capital Costs	For Expenses				
1								
2								
3								
4								
5								

(End of Appendix A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Scoping Memo and Ruling on all parties of record in this proceeding or their attorneys of record.

Dated March 21, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.